

EXHIBIT 1

1	UNITED STATES OF AMERICA SOUTHERN DISTRICT OF ILLINOIS	2149	I N D E X WITNESSES ALL WITNESSES: For Plaintiff: MARY KALETA: Direct Examination by Mr. Fibich Cross-Examination by Mr. Strain Redirect Examination by Mr. Fibich Recross-Examination by Mr. Strain Cheri Spath: Video Designations by - Exhibit No. 2495	2151 PAGE: 2152:22 2213:7 2269:22 2280:11 2285:4
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3	D.W.K., Jr., and parents) Mary and Daniel Kaleta,) Plaintiffs,) v.) No. 3:14-cv-847-NJR			
4) Abbott Laboratories, Inc.,) Defendant.)			
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10	TRANSCRIPT OF JURY TRIAL PROCEEDINGS DAY 9 - P.M. SESSION	10		
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12	BEFORE THE HONORABLE NANCY J. ROSENSTENGEL UNITED STATES DISTRICT JUDGE	12		
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14	March 12, 2015	14		
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20	REPORTED BY: Christine A. Dohack, RMR, CRR, Official Court Reporter 301 West Main Street Benton, Illinois 62812 (618) 439-7725 Christine_Dohack@ilsd.uscourts.gov	20		
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24	Proceedings recorded by mechanical stenography, produced by computer-aided transcription.	24		
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1	APPEARANCES:	2150	(Subsequent to lunch recess, proceedings continued in open court at 12:26 p.m., jury present.) THE COURT: All right. Be seated. I hope you enjoyed your lunch, ladies and gentlemen. We'll proceed with the plaintiff's next witness. MR. FIBICH: At this time, the plaintiff would call Mary Kaleta. THE COURT: Mrs. Kaleta, if you will come forward to the witness stand, please. (Witness sworn by clerk.) THE WITNESS: My name is Mary Kaleta. M-A-R-Y. K-A-L-E-T-A. MR. FIBICH: Okay. May I proceed? And I think I'm a little loud. THE CLERK: I'm working on it. MR. FIBICH: Okay, thank you. Are we ready to go? THE CLERK: We'll try. Keep talking. MARY KAleta, having been first duly sworn, was examined and testifies as follows: DIRECT EXAMINATION BY MR. FIBICH: Q. Would you please identify yourself again for the members of the jury. A. Yes. My name is Mary Kaleta.	2152 2152:22 2213:7 2269:22 2280:11 2285:4
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1 A. Yes. I had to because of the school. 2197
2 Q. Does █ like girls?
3 A. Yeah, he's 15.
4 Q. Has he told you that he would like to have a wife
5 some day?
6 A. Oh, yes.
7 Q. You said, oh, yes. Why do you say it like that?
8 A. Because he mentions it several times. He
9 mentioned, *when I get married, mom, I'm going to live*
10 *close to you.* I'm like, okay, █ But it would take a
11 real special woman.
12 Q. Do you think that person really exists in this
13 world that would be able to take care of █ with all
14 his problems?
15 MR. STRAIN: Objection, Your Honor.
16 THE COURT: Overruled.
17 A. No.
18 Q. (BY MR. FIBICH) Does █ get angry?
19 A. Yes. Yes, he has tantrums.
20 Q. And why does he have tantrums?
21 A. I'll tell him, █ it's time for you to cath.
22 And he'll say, *I'm not doing this when I get older. I'm*
23 *going to quit it.* And he, he's physical. He punched my
24 cabinet window and broke it.
25 Q. And why does he, why does he object to cathing

1 himself, if you know. 2198
2 A. He hates it. He hates that he has to go and cath
3 himself. He says he wished he could be like █ and
4 just go like █.
5 Q. You okay?
6 A. Yeah.
7 Q. Let's get through it, okay?
8 A. Okay.
9 Q. Do you think █ -- I mean █ needs
10 psychological care?
11 A. Yeah, I do.
12 Q. Can you afford that?
13 A. No, I can't.
14 Q. References have been made to the therapist that
15 has come to your house, and we're going to look at some
16 videos of that in a minute. Is the therapist still
17 working with █ -- I mean, excuse me -- █?
18 A. No. Since my husband's been unemployed, we lost
19 █ therapist. And he really needs therapy.
20 Q. And █ is here with you and your husband during
21 this trial; is that correct?
22 A. Yes. I have to take care of him.
23 Q. And have you noticed any problems with █
24 because he's not getting his therapy?
25 A. Yes. His muscles are tightening and his muscles

1 are aching and I got him a heating pad, but we can't help¹⁹⁹
2 it. I mean, I took him to the hotel gym just to go on the
3 treadmill to get him walking and it helps a little, but he
4 needs more than that. He needs his muscles stretched out.
5 He needs the work that William was doing with him.
6 Q. And when was, when did William stop doing therapy
7 for █?
8 A. That was in November with the MACE surgery. He
9 hasn't had it since then.
10 Q. Does █ gets depressed?
11 A. Yes, he does.
12 Q. And how do you notice that or how do you perceive
13 that? Why do you say he gets depressed?
14 A. Well, because he has a temper. And he speaks out
15 a lot. And he, he speaks his mind. And, you know, he'll
16 say things like, *I'm going to kill myself.* You know?
17 Q. Have you taken those threats seriously?
18 A. Of course. You got to.
19 Q. Did the school call you about █ threatening
20 suicide at school?
21 A. Yeah. He said, *I'm going to shoot myself.* And
22 Mr. R. -- that's what they call him, the counselor -- he
23 called me, he says, *you got a gun in the house?* I says,
24 no. And he says, well, *this is what your son just said.*
25 And then I talked to Mr. R. He says, *I know that*

1 *he wants to kill himself but this is like with a gun, so*²⁰⁰
2 the school had to take seriously. They take anything
3 seriously, really.
4 Q. Let me ask about another school activity. Has he
5 attempted to swim at the school?
6 A. Yeah. That's a field trip in the summertime.
7 They go to a public swimming pool. They won't let █
8 go in because he has a diaper. So, he can't go on that
9 field trip.
10 Q. If he went on the field trip, he could put a
11 bathing suit on, could he not?
12 A. He still has to wear the diaper.
13 Q. Who, who spends the most time with █?
14 A. I do.
15 Q. Do you help him bathe?
16 A. Yes, I do.
17 Q. Why do you have to help him bathe?
18 A. Okay. Um, well, █ cannot stand -- he can
19 stand but he's very wobbly, let's put it that way, okay?
20 He has a chair in the tub. He sits in the chair. He
21 could wash his front, he even puts his head in there. But
22 I help him with his head. And -- but when it comes to his
23 backside, he can't wash his backside at all because if he
24 were to stand in the tub, he will fall and hurt himself.
25 So what he does is, I say, okay, █, he stands up real

1 Q.	Does ████ write very well?	2209	1 minutes.	2211
2 A.	No, he does not.		MR. STRAIN: Thank you, Your Honor.	
3 Q.	Does he spell very well?		(Court recessed from 2:06 p.m. to 2:21 p.m.)	
4 A.	No.		(Proceedings continued at the bench, outside the	
5 Q.	Are you currently using birth control?		5 hearing of the jury.)	
6 A.	Yes.		6 MR. STRAIN: I didn't want to do this without	
7 Q.	And is your intention to never get pregnant again?		7 advising the Court. She said since her husband got	
8 A.	Never.		8 unemployed, they lost his insurance. His physical	
9 Q.	Did ████ write a story called Miracles?		9 therapist for 15 years, they have lost, and he really	
10 A.	Yes, he did.		10 needs it and they have no way to get it. I'm entitled to	
11 Q.	Did he write this on his own, without any prodding		11 ask what they have done to investigate forms of assistance	
12 from you or your husband?			12 to get that physical therapist back. She has those --	
13 A.	Yes, he did.		13 case law -- and I have it right here, but there is case	
14 Q.	Has ████ adopted the Christian theology of the		14 law on it that once someone opens the door like that and	
15 New Hope Baptist Church?			15 says because of lack of funds, they can't get a needed	
16 A.	Yes. He loves going to church.		16 service, they're not -- then I'm entitled to inquire into	
17 Q.	Does he go regularly to church?		17 what they have done to attempt to get public assistance.	
18 A.	Yes, he does.		18 And there is public assistance.	
19 Q.	And has he been baptized in that church?		19 And they also said they couldn't afford	
20 A.	Yes, he has.		20 counseling, so there's two different things in, you know,	
21 Q.	I want to ask you if that is something that ████		21 the record. She said one of them with tears. So, it's a	
22 wrote?			22 very emotional thing. It's in the context of this young	
23 A.	Yes, it is.		23 man needing emotional counseling because he's threatening	
24 Q.	And it's hard for me to read because of his		24 to shoot himself and couldn't be more prejudicial for the	
25 handwriting. We've got it up here on the screen. Would			25 jury thinking, unless they give him an award, he's going	
1	you please read it?	2210	1 to be without counseling and be at risk of suicide. It's ²²¹²	
2 A.	Sure. The title is called Miracles. "God worked		2 very prejudicial.	
3 a miracle in my life and this is the miracle. I wasn't		3 THE COURT: So what you want to do is what she's		
4 supposed to walk but God saw different and he made me		4 done to inquire?		
5 walk. God does work miracles. Turn to Psalms 139:7 to		5 MR. STRAIN: What she's done to inquire and I		
6 11."		6 don't know what she's going to say, and then we'll address		
7 Can I tell how he did this?		7 that with our life care plan people if things are		
8 Q.	Please. How did he do this?		8 available to her. We have to now.	
9 A.	He was online. He saw a five-year-old online		9 MR. FIBICH: Well, Your Honor, I don't --	
10 behind a pulpit and he turned to me, he says, mom, look at		10 MR. STRAIN: They're going -- then the jury's		
11 this. I said, yeah. He says, if this five-year-old could		11 going to think if they don't give them an award, the young		
12 do it, I could do it. He grabbed a piece of paper and		12 man's at risk. It's a terrible thing.		
13 pencil and he titled it, like what I just read, this is		13 MR. FIBICH: Your Honor, I don't think it opened		
14 what he wrote because he saw you a five-year-old on the		14 the door. Basically she said her husband's unemployed.		
15 internet.		15 They don't have their therapist. She doesn't have the		
16 Q.	Mary, Mr. Strain is going to have a lot of		16 money to pay for it. The fact of the matter is, he's	
17 questions for you about things in medical records that		17 going to find employment. So there's no benefits. He		
18 happened long time ago.		18 gets into total speculation about what's out there. If he		
19 A.	That's okay.		19 wants to ask her if -- I mean, what is it you want to ask	
20 Q.	Are you prepared to answer those questions?		20 her?	
21 A.	Yes.		21 MR. STRAIN: I'm going ask her what she's done to	
22	MR. FIBICH: Pass the witness, Your Honor.		22 investigate different programs.	
23	THE COURT: Okay. We have been going for quite		23 THE COURT: And I think that's reasonable. As	
24 awhile, so let's take a break. We're also having a few		24 long as it doesn't go too far, you're entitled to that.		
25 technical difficulties we'll explore. So, let's take 15		25 MR. STRAIN: Thank you very much, Your Honor.		

1 Q. And of course, we, as part of this, we were given²²¹⁷
2 the Argo Community High School records.
3 That other call you got though from the school
4 about [REDACTED] threatening to hurt himself at school?
5 A. Yes.
6 Q. If we want to see more details of that, when it
7 happened, what exactly was said, we should go to the
8 school records for that, too, shouldn't we? I mean, if
9 they made a record about something on Facebook, they would
10 have made a school record about that.
11 A. He wasn't at Argo.
12 Q. Where was he?
13 A. I'm not sure what school it was, but it was
14 grammar school and Mr. R. was his counselor.
15 Q. So we'll go to those records then. How long ago
16 was that? I thought you had -- I misunderstood. I
17 thought you said that was recent. How long ago was that?
18 A. I can't be for sure, so I don't know if I should
19 say.
20 Q. Okay. Well, I don't want you to guess, but can
21 you tell us whether it's within the last couple years or
22 when he was younger or when, before he --
23 A. I would say somewhere around junior, 6th, 7th, 8th
24 grade, somewhere around there.
25 Q. So, 6th, 7th, 8th grade is somewhere between three

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1 program called --
2 MR. FIBICH: Excuse me, Your Honor. I want to
3 object to the relevancy of this, calls for speculation,
4 violates the motion in limine, violates what Mr. Strain
5 says we were going to talk about.
6 MR. STRAIN: It does not.
7 THE COURT: Objection will be overruled.
8 Q. (BY MR. STRAIN) I'm sorry. Let me just ask: Has
9 she talked to you about or have you looked into Illinois
10 program called SAS, for children like [REDACTED] or needs like
11 that?
12 A. There is a program called DSCC.
13 Q. Have you looked into that?
14 A. I have that.
15 Q. Okay. Okay. So --
16 A. But that's only to do with the spina bifida.
17 Q. Okay. I don't want to get into too much detail.
18 I don't think we need to on this because there are people
19 who specialize in this. I don't. But you are looking
20 into getting assistance for [REDACTED] as you should, as he
21 needs; right?
22 A. Correct.
23 Q. Okay. Good. Now, just so you know where I'm
24 going, Mrs. Kaleta, I am going to ask, now ask you
25 questions about a couple of things Mr. Fibich asked you

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1 and four years ago?
2 A. Yeah.
3 Q. Does that sound about right?
4 A. (Nonverbal response.)
5 Q. Okay. And nothing like that since?
6 A. No. But he's still at home.
7 Q. Okay. Now, you mentioned that you wanted
8 counseling for [REDACTED] and you wanted to get the therapist
9 back, but your husband lost his insurance, his work and
10 the insurance with it; right?
11 A. Yes.
12 Q. So -- and that happened in January, I think, when
13 your husband lost his job? The first of the --
14 A. Yes.
15 Q. So, have you and your husband looked into what
16 the, kind of public assistance you could get?
17 A. We're doing it right now.
18 Q. You're --
19 A. We're in the process right now.
20 Q. What public assistance are you looking into that
21 will help [REDACTED]?
22 A. It was called All Kids. I am having help through,
23 the state social work is helping me try and get insurance
24 on [REDACTED]
25 Q. And how about, has she told you about the Illinois

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1 about and about medical records, about what doctors told
2 you. Okay?
3 A. Okay.
4 Q. All right. And I understand, you know, now in
5 2015, how hard it is to remember. I understand that.
6 Everyone understands that. I'm not going to ask you about
7 what your doctors knew because we have their testimony on
8 that. I'm just going to ask you about what they told you.
9 Okay?
10 A. Okay. But I don't remember 21 and 15 years ago.
11 Q. Sure. Absolutely. Okay. But let me see if we
12 can go about -- I just want you to understand, I'm not
13 going to ask you about what your doctors knew. The
14 doctors will testify about that. I just want to ask you
15 about what they told you. Okay?
16 A. (Nonverbal response.)
17 Q. All right. Now, Dr. Timothy McGonagle is your
18 doctor. He's the doctor who takes care of you for
19 epilepsy; correct?
20 A. Correct.
21 Q. I want to put his picture up there. You have to
22 tell me that's his picture. I got it off his website.
23 A. Yeah, that's him.
24 Q. That's Dr. McGonagle. Okay.
25 A. Yeah.

1 If we need to pull in a custodian, it would have 2293
2 been good -- we have been talking about agreements on
3 medical records since the beginning of this trial. I
4 really, I hate to say never, but I can't remember ever
5 having a time when people squabbled about medical records
6 in a major suit like this. There are enough things to
7 deal with.

8 THE COURT: Well, that's what I've been shocked
9 about when it, when it comes up, so I didn't limit him on
10 what he was allowed to question her about. So, that
11 portion will come in. You said it's going to be a
12 redacted version: correct?

13 MR. STRAIN: Yes, Your Honor. Yes, Your Honor.

14 MR. BALL: So the parts we questioned about are in
15 evidence, and that's what we read.

16 MR. SAMPSON: I'm not sure I understand. What we
17 talked about at the bench conference, Your Honor, was the
18 exact portion that you said he should not use with this
19 witness is exactly what they pulled back up, highlighted,
20 and in fact underlined in red.

21 THE COURT: I don't think it was.

22 MR. SAMPSON: It was the portion that they were
23 discussing what she told them, which you said --

24 THE COURT: I said he could ask her about

25 conversations between her and the doctor but not what the

1 doctor was saying to another doctor. 22

I doctor was saying to another doctor:

2 MR. SAMSON: And the entire document is a
3 communication between doctors.
4 MR. BALL: He's recounting his conversation with

6 MR. SAMPSON: I know exactly what he is saying.
7 There are, there are aspect -- let me clarify one thing.
8 There were a number of medical records that Mr. Strain
9 went through. Some of those, we aren't going to have
10 objected to. I don't know which were which with him in
11 that list. But the McGonagle records, because we have a
12 real problem with, with much of McGonagle's testimony and
13 the, and some of the information within his documents,
14 that that document should not come into evidence until we
15 actually argue the substance of it, which will come in
16 connection with Dr. McGonagle's testimony we're going to
17 offer.

18 MR. BALL: The only part of Dr. McGonagle's record
19 that was shown to the jury and questioned Miss Kaleta
20 about was the part the judge ruled was appropriate, which
21 was the communications between the patient and the doctor
22 which was, is admissible under numerous rulings. And you
23 made that ruling. That's all we're offering at this time
24 with respect to that record.

25 I am -- we have not objected to, and you, and even

1 over objection, there's been all kinds of Abbott records²²⁹
2 going in with iffy foundation and all that kind of thing
3 and we have gone right along here. And now we have the
4 medical records of the mother, and they're sitting here
5 trying to keep them out. That's unbelievable.

6 MR. STRAIN: They're putting in stacks of the
7 child's records asking our agreement like that, without
8 any foundation.

9 THE COURT: Well, I'm not going to hear any more
10 on it today. That portion will come in. I don't
11 understand, I mean, the medical records -- I mean, you
12 know, it blows my mind that we can't reach an agreement on
13 the admissibility of medical records. It confirms, you
14 guys can't agree to anything and I'm getting tired of it.

15 MR. SAMPSON: I understand, Your Honor. And
16 again, some of those we don't have a problem with. The
17 earlier ones that are, we believe, relevant is the
18 McGonagle records that are primarily --

19 THE COURT: He sat here and went over the records
20 with the witness, and I said he could do that and I said
21 they come into evidence. Is that understood?

22 MR. STRAIN: Yes.

23 THE COURT: Okay. I'll see everybody tomorrow in
24 case we have anything to take up.

25 (Court adjourned at 4:41 p.m.)

REPORTER'S CERTIFICATE

I, Christine A. Dohack, Registered Merit Reporter
and Certified Realtime Reporter in and for the United
States District Court for the Southern District of
Illinois, do hereby certify that I was present at and
reported in machine shorthand the proceedings in the
above-mentioned court; and that the foregoing transcript
is a true, correct, and complete transcript of the
electronic recording.

10 I further certify that I am not an attorney for,
11 nor employed by, nor related to any of the parties or
12 attorneys in this action, nor financially interested in
13 the action.

14 I further certify that this transcript contains
15 pages 2149-2296 and that this reporter takes no
16 responsibility for missing or damaged pages of this
17 transcript when same transcript is copied by any party
18 other than this reporter.

19 IN WITNESS WHEREOF, I have hereunto set my hand at
20 Benton, Illinois, this 12th day of March, 2015.

21
22 s/Christine A. Dohack, RMR, CRP

23 _____
24 Christine A. Dohack, RMR, CRR